

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

FRIDAY, THE 28TH JULY 2006 / 6TH SRAVANA 1928

ST.Rev..No. 42 of 2003()

**(ORDER IN TA.304/2001 of S.ALES TAX APPPELLATE TRIBUNAL,ADDL.BENCH,
KOZHIKODE, DT.6.6.2002.)**
.....

PETITIONER/ASSESSEE:

**K.P.SHAFEEQUE RAHMAN,
PROPRIETOR, MARIYU SPICES, KELAKAM, KANNUR DIST.,
RESIDING AT ZUHARA MANZIL, NEAR BOAT JETTY,
P.O. PAPPINISSERI WEST, KANNUR DISTRICT.**

**BY ADV. SRI.K.V.SOHAN
SRI.B.PREMNATH (E)**

RESPONDENTS: REVENUE:

**STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, TRIVANDRUM.**

BY ADV. SPL.GOV.T.PLEADER (TAXES) SRL.GEORGEKUTTY MATHEW

**THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD
ON 28/07/2006, ALONG WITH TRC NO. 43 OF 2003 THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:**

ORDER ON CMP.NO.442/2003 IN IA.NO.385/2003 IN STRV.42/2003

DISMISSED

28.7.2006

SD/- C.N.RAMACHANDRAN NAIR, JUDGE

SD/- K.M.JOSEPH, JUDGE

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C.N.RAMACHANDRAN NAIR &
K.M.JOSEPH, JJ.

S.T.Rev. NO. 42 & 43 OF 2003

Dated this the 28th day of July, 2006

JUDGMENT

Ramachandran Nair,J.

Heard counsel for the petitioner and Government Pleader. These Tax Revisions arise from the common order of the Tribunal, one confirming the penalty levied under Section 29A(4) of the KGST Act for attempted evasion of tax, and the other modifying the assessment and refixing the turnover by addition of three times the suppressed turnover. Petitioner-assessee transported a consignment of 9000 Kgs. of black pepper outside the State without being accompanied by proper documents. Therefore security was collected and later on goods were released. After enquiry, the Officer levied penalty under Section 29A (4) of the Act. Even though the first appellate authority cancelled the penalty, the Tribunal restored the same on further appeal by the State.

2. Counsel for the assessee contended that at the time of transport, delivery note book was there in the truck and the owner of

the goods was also accompanying the transport. However, on going through the findings of the authorities below, we find that even though owner of the goods was present with the delivery note book, the same was not filled up with details of goods under transport. Obviously, the goods would have got out of Kerala without proper documents, had it not been detained and security collected. Therefore we do not find any justification to interfere with Tribunal's order whereunder penalty levied is restored after being satisfied that there is a clear case of attempt to evade tax in respect of transport of consignment. In the assessment appeal filed by the assessee, we find the Tribunal has modified the assessment by directing addition at three times the suppression detected as against five times' addition made by the assessing officer. Since no other case of attempted evasion of tax is booked and even in this case the first appellate authority found that there is no evidence in the assessee's involvement in smuggling, we feel the addition of two times of the suppressed turnover will meet the ends of justice. We therefore modify the Tribunal's order by directing addition at twice the suppressed turnover in the place of three times

sustained by the Tribunal.

ST Rev. 43 of 2003 filed against penalty is dismissed and ST Rev. 42 of 2003 filed against assessment is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M.JOSEPH)
Judge

